TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 115.

Ferdinand F. Fowler, Ex'r
of HARRIET M. ZANE, PETITIONER,

vs.

THE COUNTY OF HAMILTON, ILLINOIS.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 10, 1901.
CERTIORARI AND RETURN FILED DECEMBER 10, 1901.

(18,197.)

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(18,197.)

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Transcript of Record.

n the United States Circuit Court of Appeals for the Seventh Circuit, October Term, A. D. 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
OUNTY OF HAMILTON, ILLINOIS, Defendant in Error. } No. 675.

rror to the circuit court of the United States for the southern district of Illinois.

Mr. George A. Sanders, counsel for plaintiff in error.
Mr. J. M. Hamill, Mr. J. R. Williams, counsel for defendant in rror.

Transcript of record filed April 2, 1900.
Printed record filed Apr. 10, 1900.
EDWARD M. HOLLOWAY, *Clerk.*

Pleas.

leas in the circuit court of the United States of America for the southern district of Illinois, held at the city of Springfield, in said district, before the Hon. William J. Allen, district judge of said district, and in the absence of the Hon. William A. Woods, the Hon. James G. Jenkins, and the Hon. Peter S. Grosscup, judges of the seventh judicial circuit, on Thursday, the twenty-first day of December, at the June term of said —, in the year of our Lord one thousand eight hundred and ninety-nine, and of our Independence the one hundred and twenty-fourth year.

Præcipe for Summons, Nov. 7, 1898.

HARRIET M. ZANE
vs.
THE COUNTY OF HAMILTON. } Assumpsit.

Be it remembered that heretofore to wit, on the 7th day of November in the year of our Lord one thousand eight hundred and inety-eight came Harriet M. Zane a citizen of the State of Massahusetts plaintiff by George A. Sanders Esq., her attorney and filed n office of the clerk of the circuit court of the United States for the outhern district of Illinois her præcipe for summons against The ounty of Hamilton a municipal corporation organized and existing nder and by virtue of the laws of the State of Illinois, defendant, n an action of assumpsit; and thereupon a summons was issued ut of the clerk's office directed to the marshal of said district to xecute which summons and the return of the marshal thereon are s follows to wit:

Summons. Issued Nov. 7, 1898.

Circuit Court of the United States of America, Southern District of Illinois, *ss:*

The United States of America to the marshal of the southern district of Illinois, Greeting:

We command you to summon the County of Hamilton if found in your district, to be and appear before our judges of our circuit court of the United States for the southern district of Illinois, on the first day of the next term thereof, to be held at Springfield, in the district aforesaid, on the first Monday of January next, to answer unto Harriet M. Zane of a plea of assumpsit to her damage as she alleges of twenty thousand dollars; and have you then and there this writ.

Witness, the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Springfield aforesaid, this 7th day of November in the year of our Lord one thousand eight hundred and ninety-eight and of our Independence the one hundred and twenty-third year.

[SEAL.] JAMES T. JONES, *Clerk.*

3 *Marshal's Return. Filed Nov.* 7, 1898.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

I have duly served the within summons on the County of Hamilton by reading and delivering a true copy of the same to Frank Lockett, county clerk of Hamilton county, Illinois, at McLeansboro, this 25th day of November, A. D. 1898.

HARLES P. HITCH,
U. S. Marshal,
By E. E. WATTS, *Deputy.*

(Indorsed:) Filed December 7th A. D. 1898. James T. Jones, clerk.

And afterwards to wit on said seventh day of November in the year last aforesaid came again the plaintiff by George A. Sanders Esq. her attorney and filed in the clerk's office of said court her declaration in said case as follows to wit:

Declaration. Filed Nov. 7, 1898.

UNITED STATES OF AMERICA:

In the United States Circuit Court, Southern District of Illinois, at the January Term, A. D. 1899.

HARRIET M. ZANE, Plaintiff, *vs.* THE COUNTY OF HAMILTON, ILLS., Defendant.	Assumpsit. Damages, $20,000.

Declaration.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of The County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the southern district of Illinois, defendant in this suit, who
4 has been summoned etc., to answer the plaintiff in a plea of trespass on the case on promises.

For that whereas the defendant heretofore, at the county-seat of Hamilton county, in the district aforesaid, at the court-house in McLeansboro, made, executed and delivered by S. B. Stelle, then county judge of Hamilton county, Illinois, and J. W. Marshall then clerk of the county court of said county, among others its six (6) county bonds, numbered 45–46–47–48–49 and 50, commonly called railroad aid bonds, for $1000 each, bearing interest at the rate of seven per cent. per annum evidenced by coupon interest notes of $35.00 each, due and payable on the 1st days of January and July, of each year.

That said bonds were dated Oct. 23 1871 and issued to the St. Louis & Southeastern Railway Company, or bearer, and were payable in the city and State of New York, twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of Jan'y and July, of each year, where the State treasurer of the State of Illinois pays the interest and debts of said State, in the city of New York.

That said bonds were registered by the auditor of the State of Illinois, Nov. 1, 1871, and with coupons attached evidencing the interest attached, so made, executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That bond No. 46, issued with the other five bonds named as aforesaid, being in the words and figures following to wit:

No. 46. UNITED STATES OF AMERICA, $1,000.

Bond of Hamilton County.

Interest seven per cent., Payable semi-annually.

State of Illinois.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum the said county for value received, promises to pay said company or bearer, in the city and State of New York, twenty years after date payable at any time before this bond becomes due after five years at the pleasure of said County of Hamilton with interest thereon from the date hereof at the rate of seven per cent. per annum payable semi-annually on the first
5 days of January and July, in each year on presentation and surrender, at the place in said city of New York, where the treasurer of the State of Illinois pays the interest and debts of said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th A. D. 1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, A. D. 1869, entitled, "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company, in the sum of two hundred thousand dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the county judge of said county, under the orders of the county court of said county, signing his name hereto, in open court, and by the clerk of said court, in obedience to the order thereof attesting the same and affixing hereto the seal of said court, in open court.

Done at the court-house at McLeansboro, in said county, on this 23d day of October anno Domini 1871.

T. B. STELLE,

[SEAL.] *County Judge of Hamilton County, Ill.*

J. W. MARSHALL,

Clerk of the County Court of Hamilton County, Ill.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 1, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day, pursuant to the provisions of an act entitled, "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16, 1869.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,
[SEAL.] *Auditor P. A.*

6 And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants, A $35.00 each series 31 to 40, inclusive, dated Jan'y 1, 1872, and due Jan'y and July 1 of 1888, 1889, 1890, 1891 and Jan. 1, 1892, representing the interest on each of said bonds at the rate of seven per cent. per annum, and payable in the city of New York, aforesaid. That said coupons are all an exact fac-simile of each other, save as to the number of the bonds to which they are attached, their serial numbers and dates when they become due.

Coupon serial No. 40 on bond No. 46, due Jan'y 1st, 1892, is in the words and figures following, to wit:

$35. $35.

McLEANSBORO, HAMILTON COUNTY,
ILLINOIS, *Jan. 1st*, 1872

The County of Hamilton, in the State of Illinois, promises to pay the sum of thirty-five dollars on the first day of January, 1892, lawful money of the United States of America, being six months' interest on bond No. 46 for one thousand dollars, issued on subscription to the St. Louis and Southeastern Railway Company.

This coupon is payable in the city of New York.

J. W. MARSHALL, *Clerk.*

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount, save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10, 1869, incorporating the St. Louis and Southeastern Railway Company, and of a vote of a majority of the legal voters in said county at an election held pursuant to law Nov. 3, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns," and that six (6) bonds were duly registered by the State auditor, as aforesaid, Nov. 1st, 1872, under the act of April 16, 1869.

Plaintiff further avers that said six (6) bonds and the coupons

thereto attached were purchased by her for an investment in th usual course of business, for a good and valuable consideration, somewhere on or about Feb. 1, 1874, and long before there was any default in the payment of the interest or principal of said bonds, and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

7 By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified, according to the tenor and effect of the said coupons and bonds, and being so liable, said defendant, in consideration thereof, afterwards, to wit, on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff the said sums of money, and interest thereon, as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898, at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to the said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received due and for use of said plaintiff; and being so indebted, said defendant, in consideration thereof, afterwards, to wit, on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards, to wit, upon the same day and year, and at the county and district last aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars ($20,000), lawful money, as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards, to wit, on the same day and year, and at the same place, aforesaid, undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless, the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of twenty thousand dollars ($20,000), and therefore said plaintiff brings this her suit, etc.

GEORGE A. SANDERS,
Plaintiff's Attorney.

8 The County of Hamilton, State of Illinois, to Harriet M. Zane, Dr.

To goods, wares and merchandise sold and delivered.....	$20,000
To money lent and advanced.....	20,000
To money paid out and expended.....	20,000
To money had and received.....	20,000
To balance due on account.....	20,000
To interest forborne due plaintiff	20,000

(Indorsed:) Filed November 7th, 1898. James T. Jones, clerk.

And afterwards, to wit, on the 6th day of January in the year of our Lord one thousand eight hundred and ninety-nine came the County of Hamilton, by Messrs. J. R. Williams and J. M. Hamill, its attorneys, and filed in the clerk's office of said court its demurrer to declaration, as follows, to wit:

Demurrer. Filed Jan. 6, 1899.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

In the United States Circuit Court, January Term, A. D. 1899.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

J. R. WILLIAMS AND
J. M. HAMILL,
Att'ys for Def't.

(Indorsed:) Filed Jan. 6th, 1899. James T. Jones, clerk.

Then afterwards to wit on the twenty-first day of December in the June term of said court in the year last aforesaid the following proceedings were had in said court in said case and entered of record to wit:

9 *Order of Dec. 21, 1899, Sustaining Demurrer.*

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

This day this case came on to be heard upon demurrer of defendant to plaintiff's declaration and the court having heard argument of counsel thereon sustains said demurrer and the plaintiff electing

to stand by her said declararion, it is therefore ordered and adjudged by the court that the defendant recover of the plaintiff its costs and charges by it about its suit in this behalf expended and that execution issue therefor.

Then afterwards to wit, on the said 28th day of March of the year last aforesaid came again the plaintiff by her attorney and filed in the clerk's office of said court her bill of exceptions in said case as follows to wit:

Bill of Exceptions. Filed M'ch 28, 1900.

Bill of exceptions.

UNITED STATES OF AMERICA, } ss:
Southern District of Illinois, }

In the Circuit Court, at the January Term, A. D. 1899.

HARRIET M. ZANE }
vs. } Assumpsit. Damages, $20,000.
COUNTY OF HAMILTON. }

In the above-entitled cause, a general demurrer to plaintiff's declaration as filed January 6, 1899 which was orally argued on or about April 1st, 1899 and leave given to file briefs, which was accordingly done and on the 21st of December 1899 the court rendered his decision sustaining the demurrer and giving judgment for the defendant to which decision of the court, plaintiff then and there excepted, for the reason that it is contrary to the law in the case. It is hereby stipulated and agreed by the parties to this suit that the only cause of action of the plaintiff against the defendant in this suit are the bonds and coupons described in plaintiff's declarttion.

Plaintiff elected to stand by her declaration and prayed for a writ of error to the U. S. circuit court of appeals, which was granted on filing bond for $500.00 and bill of exceptions within sixty (60) days.

10 And inasmuch as the matters aforesaid do not appear of record counsel for plaintiff presents this bill of exceptions and prays that the same may be signed and sealed by the court and made a part of the record and it is done accordingly.

WILLIAM J. ALLEN, [SEAL.]
U. S. District Judge.

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Then afterwards to wit on the 28th day of March in the January term of said court in the year of our Lord one thousand nine hundred the following further proceedings were had in said case in said court and entered of record to wit:

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON. } Assumpsit.

This day comes the plaintiff by G. A. Sanders Esq. her attorney and files her petition for writ of error from this court to the United States circuit court of appeals for the seventh circuit, said petition being accompanied by assignment of errors as required by the rules of said circuit court of appeals it is ordered by this court that said writ of error be allowed. Plaintiff presents her bond on writ of error in the sum of five hundred dollars which bond is approved by the court and ordered to be filed.

Petition for Writ of Error. Filed M'ch 28, 1900.

Petition for writ of error.

UNITED STATES OF AMERICA:

In the Circuit Court, Southern District of Illinois.

HARRIET M. ZANE
vs.
THE COUNTY OF HAMILTON. } Assumpsit. Damages, $20,000.

And now comes the plaintiff by George A. Sanders, her attorney in the above-entitled cause, and petitions the court for a writ of error in this cause to the circuit court of appeals for the seventh circuit to be holden in the city of Chicago.

11 *Assignment of Errors. Filed M'ch* 28, 1900.

And plaintiff herewith files an assignment of errors in accordance with the rules of said circuit court of appeals praying for a reversal of the judgment rendered in the above-entitled cause, on demurrer to her declaration sustained by the judge of the circuit court for the southern district of Illinois, December 21st, 1899.

Assignment of Errors.

And now comes the plaintiff, by her attorney, George A. Sanders, and says that there are manifest errors in the record and proceedings in the above-entitled cause in this:

First.

The court erred in sustaining defendant's demurrer to plaintiff's declaration and giving the judgment for defendant on the demurrer for costs.

The plaintiff in this case elects to stand by her declaration, which is in the words and figures following to wit:

Declaration.

Harriet M. Zane, a resident and citizen of Boston, State of Massachusetts, plaintiff in this suit, by George A. Sanders, her attorney, complains of The County of Hamilton, in the State of Illinois, a public corporation, organized and existing under and by virtue of the laws of the State of Illinois, a citizen of said State, resident of the southern district of Illinois, defendant in this suit, who has been summoned, etc., to answer to the plaintiff in a plea or trespass on the case on promises.

For that whereas the defendant heretofore, at the county-seat of Hamilton county, in the district aforesaid, at the court-house at McLeansboro, made, executed and delivered by S. B. Stelle, then county judge of Hamilton county, Illinois and J. W. Marshall then clerk of the county court of said county, among others its six (6) county bonds, numbered 45–46–47–48–49 and 50, commonly called railroad aid bonds, for $1,000.00 each, bearing interest at the rate of seven per cent. per annum evidenced by coupon interest notes of $35.00 each, due and payable on the first days of January and July of each year.

That said bonds were dated Oct. 23, 1871 and issued to the St. Louis & Southeastern Railway Company, or bearer, and were
12 payable in the city and State of New York, twenty years after date, payable at any time before they became due after five years, with interest at the rate of seven per cent. per annum, payable semi-annually on the first days of Jan'y and July of each year where the State treasurer of the State of Illinois, pays the interest and debt of said State, in the city of New York.

That said bonds were registered by the auditor of the State of Illinois, Nov. 1, 1871, and with coupons attached evidencing the interest attached, so made, executed and delivered, payable to the St. Louis & Southeastern Railway Company, or bearer, were exact copies of each other except as to their serial numbers. That bond No. 46 issued with the other five bonds named as aforesaid, being in the words and figures following, to wit:

No. 46. UNITED STATES OF AMERICA, $1,000.00.

Bond of Hamilton County.

Interest seven per cent., Payable semi-annually.

State of Illinois.

Know all men by these presents, that the County of Hamilton, in the State of Illinois, acknowledges itself indebted and firmly bound to the St. Louis & Southeastern Railway Company or bearer, in the sum of one thousand dollars lawful money of the United States of America, which sum of — said county for value received, promises to pay said company or bearer, in the city and State of New York, twenty years after date, payable at any time before this bond be-

comes due after five years at the pleasure of said County of Hamilton with interest thereon, from the date hereof at the rate of seven per cent. per annum payable semi-annually on the first days of January and July, in each year on the presentation and surrender, at the place in the said city of New York where the treasurer of the State of Illinois pays the interest and debt of the said State, of the coupons hereto attached as they severally become due.

This bond is one of two hundred of like tenor and amount, of same issue, and it is issued under and by virtue of the authority given by a majority of all the legal voters in said county, by their votes, at an election held in the said county, pursuant to law, on the third day of November, A. D. 1868, and also by the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th, A. D. 1869, entitled "An act to incorporate the St. Louis & Southeastern Railway Company."

This bond is also issued under the provisions of an act of the General Assembly of the State of Illinois, in force April 16th,
13 A. D. 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

This bond is issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of the said St. Louis & Southeastern Railway Company in the sum of two hundred thousand dollars.

In testimony whereof, the said County of Hamilton has executed this bond, by the county judge of the said county, under the order of the county court of said county, signing his name hereto, in open court, and by the clerk of said court, in obedience to the order thereof attesting the same and affixing hereto the seal of the said court, in open court.

Done at the court-house at McLeansboro, in said county on this the 23rd day of October anno Domini 1871.

T. B. STELLE,

[SEAL.] *County Judge of Hamilton County, Ills.*

Attest:

J. W. MARSHALL,

Clerk of the County Court of Hamilton County, Ills.

Endorsed.

AUDITOR'S OFFICE, ILLINOIS,
SPRINGFIELD, *November* 1*st*, 1871.

I, Charles E. Lippincott, auditor of public accounts of the State of Illinois, do hereby certify that the within bond has been registered in this office this day pursuant to the provisions of an act entitled "An act to fund and provide for paying the railroad debts of counties, townships, cities and towns," in force April 16th 1869.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of my office, the day and year aforesaid.

C. E. LIPPINCOTT,

[SEAL.] *Auditor P. A.*

And plaintiff avers that each of her six bonds has attached nine (9) coupons, or interest warrants, A $35.00 each series 31 and 40 inclusive dated Jan'y 1, 1872 and due Jan'y and July of 1883–1889–1890–1891 and Jan'y 1–1892, representing the interest on each of said bonds at the rate of seven per cent. per annum and payable in the city of New York aforesaid. That said coupons were all an exact fac-simile of each other save as to the number of the bonds to which they are attached, their serial numbers and the dates when they became due.

Coupon serial No. 40, on bond No. 46 due Jan'y 1st, 1892, in the words and figures following to wit:

14 $35.00. $35.00.

McLEANSBORO, HAMILTON COUNTY,
ILLINOIS, *Jan'y 1st*, 1872.

The County of Hamilton in the State of Illinois promises to pay the sum of thirty-five dollars on the first day of January 1892, lawful money of the United States of America, being six months' interest on bond No. 46, for one thousand dollars, issued on subscription to the St. Louis & Southeastern Railway Company.

This coupon is payable in the city of New York.

J. W. MARSHALL, *Clerk.*

Plaintiff avers that said bonds are a part of an issue of two hundred of like tenor and amount save as to dates of issue and registration, as aforesaid, under and by virtue of the authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10–1869 incorporating the St. Louis & Southeastern Railway Company, and of a vote of a majority of the legal voters in the said county at an election held pursuant to law Nov. 3rd, 1868, and also by virtue of the provisions of an act of the General Assembly of the State of Illinois, in force April 16th, 1869, entitled, "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns," and that said six (6) bonds were duly registered by the State auditor as aforesaid, Nov. 1st, 1872, under the act of April 16th, 1869.

Plaintiff further avers that said six (6) bonds and the coupons thereto attached were purchased by her for an investment in the usual course of business, for a good and valuable consideration, somewhere on or about February 1st, 1874, and long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

By means whereof, and by force of the statute in such cases made and provided, said defendant became liable to pay said plaintiff said sums of money in said bonds and coupons or interest warrants specified according to the tenor and effect of said coupons and bonds, and being so liable said defendant in consideration thereof, afterwards, to wit: on the same day and year last aforesaid, and at the county and district aforesaid, undertook then and there and faithfully promised the said plaintiff, well and truly to pay unto said

plaintiff the said sums of money, and interest thereon as specified in the bonds and coupons, or interest warrants, according to their tenor and effect.

For that whereas the said defendant on the 1st day of October in the year of our Lord 1898 at the county and district last aforesaid, was indebted to the plaintiff in the sum of twenty thousand dollars ($20,000) of like lawful money as aforesaid, for money before that time lent and advanced by said plaintiff to said defendant; and at a like request of said defendant before that time paid out and expended for the said defendant; and at a like request of the defendant and for money by said defendant before that time had and received, due and for use of said plaintiff; and being so indebted said defendant in consideration thereof, afterwards, to wit: on the same day and year and at the same place aforesaid, undertook and faithfully promised said plaintiff well and truly to pay the said plaintiff the sums of money in this count mentioned.

And whereas, also, the defendant afterwards to wit, upon the same day and year, and at the county and district aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money before that time due and owing from the defendant to said plaintiff, then and there being in arrears and unpaid, and upon such accounting said defendant then and there was found in arrears, and in debt to the plaintiff in the further and other sum of twenty thousand dollars, ($20,000) lawful money as aforesaid, and being so found in arrears and indebted to the plaintiff, the defendant, in consideration thereof, afterwards to wit: on the same day and year and at the same place aforesaid undertook and then and there faithfully promised to pay said plaintiff the said sum of money last above mentioned, when the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant, although often requested, has not paid the several sums of money above mentioned, or any or either of them, or any part thereof to the said plaintiff, but defendant has hitherto altogether refused and still does refuse to the damage of said plaintiff of twenty thousand dollars ($20,000) and therefore said plaintiff brings this her suit, etc.

(Signed) GEORGE A. SANDERS,
Plaintiff's Attorney.

The County of Hamilton, State of Illinois, to Harriet M. Zane, Dr.

To, goods, wares and merchandise sold and delivered.....	$20,000
To money lent and advanced.....	20,000
To money paid out and expended.....	20,000
To, money had and received.....	20,000
To, balance due on account.....	20,000
To, interest forborne due plaintiff.....	20,000

A general demurrer to plaintiff's declaration, was filed, as follows, to wit:

16 *Assignment of Errors. Filed March* 28, 1900.

UNITED STATES OF AMERICA, *Southern District of Illinois,* } *ss:*

In the United States Circuit Court, January Term, A. D. 1899.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON.

And the said defendant, by J. R. Williams and J. M. Hamill, its attorneys, comes and says that the declaration in said cause is not sufficient in law.

(Signed) J. R. WILLIAMS AND
J. M. HAMILL,
Att'ys for Def't.

Declaration endorsed as follows: No. 8545. Circuit court, January term A. D. 1899. Harriet M. Zane, plaintiff, *vs.* The County of Hamilton, defendant. Declaration. Filed November 7–1898. James T. Jones, clerk.

Demurrer to the declaration endorsed: Harriet M. Zane *vs.* County of Hamilton. Demurrer to declaration. Filed January 6, 1899. James T. Jones, clerk.

Second.

The court erred in not overruling the general demurrer of defendant to plaintiff's declaration and in giving judgment for defendant for costs.

The demurrer admits the facts as stated in the declaration but denies that under the law applicable to this case, the plaintiff has a right to recover on the instruments mentioned in the declaration.

The declaration states that the defendant by its then county judge, S. B. Stelle, and its then county clerk, J. W. Marshall at its court-house in McLeansboro, the county-seat of defendant, Hamilton County, Illinois, did make, execute and deliver among others, its six (6) county bonds numbered 45–46–47–48–49 & 50, commonly called railroad aid bonds for $1,000 each, bearing interest at the *the* rate of seven per cent. per annum evidenced by coupon interest notes for $35.00 each and payable Jan. & July of each year.

17 That said bonds were dated Oct. 23–1871, and issued to the St. Louis & Southeastern Railway Company or bearer, and were payable in the city and State of New York, twenty years from date or at any time after five years at the option of the county, with seven per cent. interest Jan. and July 1st of each year where the State treasurer of the State of Illinois pays the interest and debt of said State in the city of New York.

That said bonds were registered by the then State auditor Nov. 1, 1871 as will fully appear by copy of a bond No. 46—*supra.*

That said bonds were a part of an issue 200 of like tenor and amount and issued under and by virtue of the authority given by a majority of all the legal voters of said county, by their votes, at an election held in said county, pursuant to law, on the 3rd day of November 1868 and also by authority given by the provisions of an act of the General Assembly of the State of Illinois, in force March 10th–1869, entitled, "An act to incorporate the St. Louis & Southeastern Railway Company."

The bonds were also issued under the provisions of an act of the General Assembly of the State of Illinois in force April 16th, 1869, entitled "An act to fund and provide for the payment of the railroad debts of counties, townships, cities and towns."

The bonds were issued in part payment of a subscription made by said county, under and by virtue of the authority aforesaid, to the capital stock of said St. Louis & Southeastern Railway Company in the sum of ($200,000) two hundred thousand dollars.

Plaintiff avers that she purchased the six bonds and coupons mentioned in the declaration as an investment in the usual course of business, for a good and valuable consideration long before there was any default in the payment of the interest or principal of said bonds and without any notice whatever of any supposed want of legislative power or irregularity in their issue.

The above facts are all admitted by the demurrer and makes the plaintiff a *bona fide* holder and owner for value of the bonds and coupons mentioned in the declaration.

"An act to incorporate the St. Louis and Southeastern Railroad Company," in force March 10, 1869. Pages 239–245, Private Laws, State of Illinois, vol. 3, 1869.

SEC. 15. The several counties in which any part of said railway may be hereafter located, or that may lie on or near the line of the railway, and the several townships in such counties which have adopted or may hereafter adopt township organization and the cities and incorporated towns in the said counties, are hereby authorized to subscribe and take stock in said company upon the application of said company, for such an amount as they
18 may think proper, payable in bonds, lands or right of way, and subject to such agreements and stipulations, as to the route of said railway, the time of delivery and payment of the bonds, as may be agreed upon: Provided, that no subscriptions shall be made by any county court nor by the legal authorities of an incorporated city or town or township, until after the question of such subscription shall have been submitted, by order of the county court or other legal authorities of said city, town or township to the legal voters thereof, at a general or special election to be called, conducted and returns made, canvassed and published in the usual manner of conducting elections in said county, incorporated city or town or township. All such notices shall state the amount of such subscription that would be submitted at such election; at which election each voter shall vote a ticket, upon which is printed or written "For subscription" or "Against subscription,"

and if a majority of the ballots cast at such election shall be "For subscription," it shall be the duty of the county court or the legal authorities of such incorporated city, town or township, to subscribe the amount stated in the order of election to the stock *holders* of said company.

SEC. 16. Elections may be held in any such county, incorporated city or town or township, upon the question whether such county, city, town or township shall subscribe for any specified amount of the capital stock of said railway company whenever a petition shall be presented, as hereinafter described; and as often as may be required by petitioners, whenever a petition shall be presented to the county clerk, signed by fifty legal voters of any such county, setting forth the amount of stock to be taken by such county and specifying the time for holding *by* such an election, it shall be the duty of the county clerk of any such county to give thirty days' notice of the time for holding such election, which time shall be the same as that specified in said petition; and whenever a petition shall be presented to the supervisor of any such township, or to the corporate authorities of any such city, or town, signed by twenty-five legal voters of any such township, city or town, setting forth the amount of stock proposed to be taken by any such township, city or town, and specifying the time for holding such election, it shall be the duty of the supervisor of every such township and the duty of the clerk of any such city or town to give thirty days' notice of the time of holding such election in such township, city or town, which time shall be the same as that specified in such petition; and all such notices shall be given in the same manner, and such election shall be conducted and returns made, canvassed and published in the same way and at the same places provided for holding general elections in such counties, townships, cities and towns; at which elections the qualified voters of the respective counties, townships, cities and towns shall vote "For subscription," or "Against subscription," and if a majority of the votes cast at such election by voters voting on that subject, shall be "For subscription," it shall be the duty of the county court or board of supervisors of every such county, the supervisor and clerk of such township and the corporate authorities of such city or town to subscribe, at once, upon the request of the directors or corporators of said company, the same amount so voted for, and to issue and deliver to said company the same amount *at* the stock so subscribed of the bonds of such county, township, city, or town, as the case may be, payable at any time specified, not exceeding twenty years from date, or sooner at the option of the county, township, city or town issuing the same, with interest coupons attached to the same, at a rate not exceeding eight per cent., payable annually or semi-annually; which said bonds shall be of such denomination and the principal and interest payable at such place or places, either within or without the State, as may be agreed upon, provided, that at any election held under the provisions of this act at any other time than the time for holding general elections for State and county purposes, it shall not be necessary for the several boards of registry to make a new register

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of the several voting precincts, but the register made of the legal voters at the last general election held for the election of State and county officers, may be used: And, provided, that the vote of any legal voter, whose name does not appear on the said register, shall be received and taken in the same manner that unregistered legal voters (votes) are taken at any general election.

SEC. 17. Any incorporated city, town or township, or any county through or near which the said railroad shall run, is hereby authorized to donate and give, as a bonus to the said railway company, any amount they may deem proper, upon such terms and conditions as may be agreed upon by and between said city, town, township, or county, and the said railway company, to secure the building of said railway: Provided, that the authorities of said city, town, township or county shall submit the question whether such donation or bonus shall be given, to the legal voters thereof, at a regular or special election held after at least thirty days' notice, and conducted, canvassed and returns made in the usual manner and places—the amount proposed to be donated being stated in the order for such election, and the tickets voted at such election shall have written or printed on them "For donation" or "Against donation;" and if at such election the majority of the legal votes cast shall be in favor of such donation, it shall be the duty of the proper authorities of such city, town or township, or county, to provide for the payment of such donation or bonus. And to provide the means for the payment of any such sum as may be given or agreed to be given, in pursuance of the provisions of this act, the said city, town, township or county shall issue bonds to said railway company, in sums of not less than one hundred dollars each, bearing interest at any rate not exceeding eight per cent. per annum, and payable at such times and places, either within or without this State, as may be agreed upon; which bonds may run for any period not exceeding twenty years.

SEC. 18. It shall be the duty of the respective authorities of the several counties, townships, cities and towns which may make such subscriptions and donations, and they are hereby required, to levy and collect a sufficient special tax on all the taxable property, both real and personal, in such counties, townships, cities and towns, to pay the interest, annually or semi-annually, accruing on such bonds, and to discharge the principal and interest, respectively, thereof.

SEC. 20. And the said company may lease or purchase, upon such terms as may be agreed upon, any other railroad or parts of railroad, either wholly or partially constructed, which may constitute or be adopted, as part of their main line; and by such lease or purchase, they shall acquire and become vested with all the rights and franchises pertaining to said road, or part of road, in the right of way, construction, maintenance and working thereof. And the county court of Gallatin county is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of

Hamilton county is hereby authorized and empowered to subscribe to the capital stock of this company the two hundred thousand dollars, or any part thereof, heretofore voted by a majority of the legal voters of said county to the Shawneetown branch of the Illinois Central Railroad Company. And the county court of Jefferson county is hereby authorized and empowered to subscribe to the capital stock of this company the one hundred thousand dollars; or any part thereof, voted by a majority of the legal voters of said county to the Mount Vernon Railroad Company. And it shall not be necessary to submit the question of making the several subscriptions in this section mentioned to the vote of the legal voters of said respective counties.

Provided: That nothing herein shall be so construed as to prevent either of the counties mentioned in this section subscribing any other or larger amounts to the capital stock of this company than the amounts mentioned in this section.

21 SEC. 21. This act shall be deemed a public act, and shall be liberally construed for all purposes therein expressed and declared, and shall be in force from and after its passage.

Approved March 10, 1869.

GEORGE A. SANDERS,
Attorney for Plaintiff.

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Bond for Writ of Error. Filed March 28, 1900.

Bond on writ of error.

Circuit Court of the United States for the Southern District of Illinois.

HARRIET M. ZANE, Plaintiff in Error,
vs.
THE COUNTY OF HAMILTON, Defendant in Error. } Assumpsit. Damages, $20,000.

Bond.

Know all men by these presents, that we, Harriet M. Zane, resident of Boston, in the State of Massachusetts, and George A. Sanders, of Springfield, Illinois, are held and firmly bound unto the County of Hamilton, in the State of Illinois, in the sum of five hundred dollars, to be paid to the said County of Hamilton, in the State of Illinois, to which payment well and truly to be made, we bind ourselves, and each of us jointly and severally, and our and each of our successors, executors and administrators, firmly by these presents.

Sealed with our seals and dated this 12th day of January, 1900.

Whereas, the above-mentioned Harriet M. Zane, of Boston, Mass., is about to prosecute a writ of error to the United States circuit court of appeals, seventh circuit, to reverse the judgment and decree

rendered in a certain action at the January term, A. D. 1899, by the circuit court of the United States, for the southern district of Illinois, in which action Harriet M. Zane was plaintiff, and The County of Hamilton defendant, whereby the validity of certain bonds and coupons owned by the said Harriet M. Zane and executed by the said County of Hamilton was denied;

Now, therefore, the condition of this obligation is such that if the above-named Harriet M. Zane, of Boston, Mass., shall prose-
22 cute her said writ of error to effect and answer all costs and damages rendered and to be rendered in case the judgment and decree shall be affirmed, or if she shall fail to make good her appeal, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof, the plaintiff Harriet M. Zane, has caused this instrument to be signed by her, by her attorney-in-fact, and the said George A. Sanders has signed and sealed this instrument.

HARRIET M. ZANE, [SEAL.]
By GEORGE A. SANDERS,
Her Att'y-in-fact.
GEORGE A. SANDERS. [SEAL.]

(Indorsed:) Filed March 28, 1900. James T. Jones, clerk.

Writ of Error. Filed March 28, 1900.

UNITED STATES OF AMERICA, *ss:*

The President of the United States *of* the honorable judges of the circuit court of the United States for the southern district of Illinois, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court before you between Harriet M. Zane plaintiff and The County of Hamilton, Illinois, defendant, a manifest error hath happened to the great damage of the said Harriet M. Zane as by her complaint appears. We being willing that error if any hath been should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be therein given that under your seal distinctly and openly you send the record and proceedings aforesaid with all things concerning the same to the United States circuit court of appeals for the seventh circuit together with this writ so that you may have the same at Chicago on Monday the sixteenth day of April 1900 in the said United States circuit court of appeals for the seventh circuit to be then and there held that the record and proceedings aforesaid being inspected the said United States circuit court of appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States this twenty-eighth day of March

in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

JAMES T. JONES,
Clerk Circuit Court U. S., South. Dist. Illinois.

(Endorsed:) Filed March 28, 1900. James T. Jones, clerk.

23 *Clerk's Certificate.*

UNITED STATES OF AMERICA, *Southern District of Illinois,* } ss:

I, James T. Jones, clerk of the circuit court of the United States in and for the southern district of Illinois do hereby certify that the foregoing is a true and complete copy of all the papers filed and proceedings thereon had in a certain case wherein Harriet M. Zane is plaintiff and The County of Hamilton is defendant as truly and completely as the same appear of file and record in my office.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Springfield in said district this thirtieth day of March in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

JAMES T. JONES, *Clerk.*

Citation.

THE UNITED STATES OF AMERICA, ss:

To the County of Hamilton, State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a United States circuit court of appeals for the seventh circuit to be holden at Chicago on the sixteenth day of April 1900 pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the southern district of Illinois wherein Harriet M. Zane is plaintiff and you are defendant in error to show cause if any there be why the judgment in the said writ of error mentioned, should not be corrected and speedy justice should not be done to the parties aforesaid in that behalf.

Witness the Honorable William J. Allen, district judge of the United States for the southern district of Illinois at Springfield in said district this twenty-eighth day of March in the year of our Lord one thousand nine hundred and of our Independence the one hundred and twenty-fourth year.

WILLIAM J. ALLEN,
District Judge.

Service of the foregoing citation is hereby accepted this 29th day of March, 1900.

J. M. HAMILL,
J. R. WILLIAMS,
Attorneys for Hamilton County, Ill.

24 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 23, inclusive, is a copy of the printed record filed in this court on the tenth day of April, 1900, which was prepared for the printer, indexed, supervised and distributed by me in accordance with the rules of this court, and upon which the cause was determined by the United States circuit court of appeals for the seventh circuit, in cause No. 675, Harriet M. Zane vs. County of Hamilton, Illinois.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventeenth day of May, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

25 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago in said seventh circuit on the third day of October, 1899, of the October term, in the year of our Lord one thousand eight hundred and ninety-nine and of our Independence the one hundred and twenty-fourth year.

And afterwards, to wit: on the fourth day of April, 1900, in the October term last aforesaid, came the plaintiff in error, by her counsel, and filed in the office of the clerk of this court his appearance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
COUNTY OF HAMILTON, ILLINOIS, Defendant in Error. } No. 675.

The clerk will enter my appearance as counsel for the plaintiff in error.

GEORGE A. SANDERS,
For Plaintiff.

Endorsed: Filed Apr. 4, 1900. Edward M. Holloway, clerk.

And afterwards on the same day, to wit: on the fourth day of April, 1900, in the October term last aforesaid, came the defendant in error, by its counsel Mr. J. M. Hamill and Mr. J. R. Williams, and filed in the office of the clerk of this court their appear-
26 ance, said appearance being in the words and figures following, to wit:

United States Circuit Court of Appeals for the Seventh Circuit, October Term, 1899.

HARRIET M. ZANE, Plaintiff in Error,
vs.
COUNTY OF HAMILTON, ILLINOIS, Defendant in Error,
} No. 675.

The clerk will enter my appearance as counsel for the defendant in error.

J. M. HAMILL.
J. R. WILLIAMS.

Endorsed: Filed Apr. 4, 1900. Edward M. Holloway, clerk.

And afterwards, to wit: on the first day of May, 1901, in the October term last aforesaid the following proceedings were had and entered of record, to wit:

TUESDAY, *May* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

Order.

It is ordered by the court that Christian C. Kohlsaat, judge of the district court of the United States for the northern district of Illinois, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Kohlsaat appeared and took his seat as a member of said court.

27 And afterwards, on the same day, to wit: on the first day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May* 1, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. Christian C. Kohlsaat, district judge.

HARRIET M. ZANE
vs.
COUNTY OF HAMILTON, ILLINOIS.
} 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

It is ordered by the court that this cause be placed on the calendar and that the same be and is hereby set down for hearing May 22, 1900.

And afterwards, to wit: on the seventh day of May, 1900, in the October term, last aforesaid, the following further proceedings were had and entered of record, to wit:

MONDAY, *May* 7, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. William H. Seaman, district judge.

28 *Order.*

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit: on the twenty-second day of May, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *May* 22, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON. } 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral argument by Mr. George A. Sanders, counsel for plaintiff in error, and by Mr. J. M. Hamill, counsel for defendant in error, and the court having heard the same, takes this matter under advisement.

29 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on the second day of October, 1900 of the October term, in the year of our Lord one thousand nine hundred, and of our Independence the one hundred and twenty-fifth year.

And afterwards, to wit: on the second day of October, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October* 2, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge. Hon. William H. Seaman, district judge.

Order.

It is ordered by the court that William H. Seaman, judge of the district court of the United States for the eastern district of Wisconsin, be designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Seaman appeared and took his seat as a member of said court.

And afterwards, to wit, on the same day, to wit: on the second day of October, 1900, in the October term last aforesaid there was filed in the office of the clerk of this court the opinion of the court in the above-entitled cause, said opinion being in the words and figures following, to wit:

30 In the United States Circuit Court of Appeals for the Seventh Circuit, May Session, A. D. 1900.

HARRIET M. ZANE, Plaintiff in Error, vs. COUNTY OF HAMILTON, ILLINOIS, Defendant in Error.	No. 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Before Woods and Grosscup, circuit judges, and Seaman, district judge.

WOODS, circuit judge, delivered the opinion of the court:

This was an action in assumpsit, brought by Harriet M. Zane, a citizen of Massachusetts, against The County of Hamilton, Illinois, to recover the amount alleged to be due upon six bonds for $1000 each issued in the name of the county to the St. Louis and Southeastern Railway Company, or bearer, and of which the plaintiff was alleged to be an innocent purchaser. The circuit court sustained a demurrer to the declaration and, the plaintiff refusing to amend, gave judgment for the defendant. The question is whether there was authority of law for the issue of the bonds.

The bonds bear date October 23, 1871 and were not executed before that date. They are a part of the issue of $200,000 referred to in the case of *Austin v. Hamilton County*, 22 C. C. A. 128, 76 Fed. 208, but are not a part of the 105 which, as shown in that case, had been owned by Walter M. Jackson and in a suit to which the county and he were parties had been adjudged to be valid. The only authority asserted for the issue of the bonds is section 20 of the
31 act of March 10, 1869, whereby the St. Louis and Southeastern Railway Company was incorporated. In *People ex rel. v. Hamill*, 134 Ill. 666, where the validity of these bonds was in issue, it was held that they were invalid because section 20 of the act mentioned was void, as being in violation of the provision of the constitution of the State that "no private or local law * * * shall embrace more than one subject, and that shall be expressed in the title." This court recognized the authority of that decision in the

Austin case, and must recognize it now. It follows that the bonds were issued without authority of law, and in the hands of any and all holders, unless like Jackson they can claim under an unreversed adjudication, must be regarded as invalid. No recital can supply the want of legal authority for their execution.

The judgment below is affirmed.

32 And afterwards, on the same day, to wit: on the second day of October, 1900, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *October* 2, 1900.

Court met pursuant to adjournment.

Present: Hon. William A. Woods, circuit judge, presiding; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON, ILLINOIS.	675. Error to the Circuit Court of the United States for the Southern District of Illinois.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the southern district of Illinois, and was argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this court, that the judgment of the said circuit court in this cause be, and the same is hereby affirmed with costs.

And afterwards, to wit: on the twenty-seventh day of October, 1900, in the October term last aforesaid, came the plaintiff in error, by her counsel, Mr. George A. Sanders, and filed in the office of the clerk of this court her petition for rehearing, said petition for rehearing being in the words and figures following, to wit:

33 In the United States Circuit Court of Appeals, Seventh Circuit, October Term, A. D. 1900.

HARRIET M. ZANE, Plaintiff in Error, *vs.* THE COUNTY OF HAMILTON, ILLINOIS, Defendant in Error.	No. 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Petition for Rehearing.

After carefully examining the opinion of this honorable court in the above-entitled cause, I respectfully submit to the court whether this cause is not a case in which a rehearing ought to be granted upon the ground that— * * *.

For the above reasons we respectfully ask this honorable court that a rehearing of this case be granted.

GEORGE A. SANDERS,
Attorney for Plaintiff.

Endorsed: Filed Oct. 27, 1900. Edward M. Holloway, clerk.

And afterwards, to wit: on the thirteenth day of November, 1900, the following further proceedings were had and entered of record, to wit:

TUESDAY, *November* 13, 1900.

Court met pursuant to adjournment.

34 Present: Hon. William A. Woods, circuit judge, presiding; Hon. James G. Jenkins, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

Before: Hon. William A. Woods, circuit judge; Hon. Peter S. Grosscup, circuit judge; Hon. William H. Seaman, district judge.

HARRIET M. ZANE *vs.* COUNTY OF HAMILTON, ILLINOIS. } 675. Error to the Circuit Court of the United States for the Southern District of Illinois.

Now again this cause comes on to be considered on the petition for rehearing, and on consideration thereof, it is now here ordered that the petition for rehearing be, and the same is hereby overruled.

35 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing typewritten pages numbered from 1 to 10, inclusive, contain a true copy of the papers filed and proceedings had thereon (except briefs of counsel) in the United States circuit court of appeals for the seventh circuit, in the case of Harriet M. Zane, *vs.* County of Hamilton, Illinois, No. 675, October term 1899, as the same remains upon the files and records of the United States circuit court of appeals, for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventeenth day of May, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

36 UNITED STATES OF AMERICA:

U. S. Supreme Court, at the October Term, A. D. 1901.

HARRIET M. ZANE, Plaintiff, *vs.* THE COUNTY OF HAMILTON, ILLS., Defendant. } No. 344. Petition for Certiorari.

It is hereby agreed and stipulated by the parties to the above-entitled cause through their attorneys: That a certified copy of the record in the U. S. circuit court of appeals of this case be taken as a return to the writ of certiorari granted by the United States Supreme

Court in the above-entitled cause of date November 27th A. D., 1901.

GEORGE A. SANDERS,
Attorney for Plaintiff.
J. M. HAMILL,
Attorney for Defendant.

Endorsed: Filed Dec. 10, 1901. Edward M. Halloway, clerk.

37 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the seventh circuit, Greeting:

Being informed that there is now pending before you a suit in which Harriet M. Zane is plaintiff in error, and The County of Hamilton, Illinois, is defendant in error, which suit was removed into the said circuit court of appeals by virtue of a writ of error to the circuit court of the United States for the southern district of Illinois, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme
38 Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 27th day of November, in the year of our Lord one thousand nine hundred and one.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

39 [Endorsed:] File No. 18,197. Supreme Court of the United States. No. 344, October term, 1901. Harriet M. Zane *vs.* The County of Hamilton, Illinois. Writ of certiorari. Filed Dec. 10 1901 Edward M. Holloway, clerk.

UNITED STATES OF AMERICA, *Seventh Circuit,* } *ss:*

In obedience to the command of the foregoing writ of certiorari and in pursuance of the stipulation of the parties, a full and true copy of which is hereto attached, I do hereby certify and return that the transcript of the record filed with the application to the Supreme Court of the United States for a writ of certiorari in the case of Harriet M. Zane, plaintiff in error, *vs.* County of Hamilton, Illinois, is a full, true and complete transcript of the record upon which said cause was heard in the United States circuit court of appeals for the seventh circuit, together *will* all proceedings in said court.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, Illinois, this eleventh day of December, A. D. 1901.

EDWARD M. HOLLOWAY,
Clerk United States Circuit Court of Appeals for the Seventh Circuit.

40 [Endorsed:] File No. 18,197. Supreme Court U. S. October term, 1901. Term No. 115. Harriet M. Zane, petitioner, *vs.* The County of Hamilton, State of Illinois. Writ of certiorari and return. Filed Dec. 13, 1901.

IN THE

Supreme Court of the United States.

No. 344.—October Term, A. D 1902.

Harriet M. Zane,
Plaintiff in Error,
v.
The County of Hamilton, Ills.,
Defendant in Error.

Petition for Certiorari.

Death of Plaintiff Suggested,

and

Motion to substitute Ferdinand F. Favor, of Dedham, Mass., Administrator, as Plaintiff.

And now comes Ferdinand F. Favor, of Dedham, Mass., Administrator of the estate of Harriet M. Zane, deceased, by his attorney, George A. Sanders, and suggests the death of Harriet M. Zane, the original plaintiff herein, and moves this Honorable Court that he as administrator of her estate be substituted as plaintiff, and be permitted to prosecute to a final decision the above entitled suit.

In proof of the death of Harriet M. Zane, and the appointment of Ferdinand F. Favor administrator of her estate, a copy of letters of said appointment by the Probate Court at Boston, Mass., dated May 1st, 1902, is filed with the Clerk of this Honorable Court.

Ferdinand F. Favor — Administrator.

By Geo. A. Sanders His Attorney.

Geo. A. Sanders
Attorney —

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

HARRIET M. ZANE,
Plaintiff in Error,

vs.

THE COUNTY OF HAMILTON, ILLS.,
Defendant in Error.

DEATH OF PLAINTIFF SUGGESTED,

AND

Motion to substitute her Administrator.
Ferdinand F. Favor, as Plaintiff.

GEORGE A. SANDERS,
Attorney.

COMMONWEALTH OF MASSACHUSETTS, }
Suffolk County. }

I, John Noble, clerk of the supreme judicial court within and for the county of Suffolk, do hereby certify that in the transcript of the record of the case entitled Henry Bigelow Williams and Charles F. Ayer, trustees, plaintiffs in error, *versus* Hosea M. Knowlton, attorney general, in the Supreme Court of the United States, No. 116, October term 1902, certain clerical errors appear, as follows:—

The words "Which motion upon hearing was allowed," appearing at the foot of page 14 of the record as printed, were inserted in the transcript of record by error, and should be stricken out, as not a part of the record.

Also that on page 50 of the record as printed, in the second line of the paragraph numbered 68, the words "upon the pleadings, the defendants' motion to have the city of Boston made a party, and the appeal from the overruling thereof, and the agreed facts" should be inserted, next after the words "was reserved" in said second line of the paragraph numbered 68; being a part of the record and having been omitted by error from the transcript of the record.

Witness my hand and the seal of the court at Boston in said county, this 22nd day of October in the year 1902.

[SEAL.] JOHN NOBLE, *Clerk.*

Supreme Court of the United States, October Term, 1902.

HENRY BIGELOW WILLIAMS and CHARLES F. AYER, Trustees, Plaintiffs in Error,
vs.
HOSEA M. KNOWLTON, Attorney General of Massachusetts. } No. 116.

Agreement to Amend Record.

It is hereby stipulated and agreed that the transcript of the record and the printed copies thereof, in the above-entitled cause, may be amended and corrected so as to conform to the foregoing certificate of the clerk of the court in which the record remains, by striking out, at the foot of page 14 of the record as printed, the words "Which motion upon hearing was allowed;" and by inserting on page 50 of the record as printed, in the second line of the paragraph numbered 68, next after the words "was reserved," the words "upon the pleadings, the defendants' motion to have the city of Boston made a party, and the appeal from the overruling thereof, and the agreed facts."

[SEAL.]

A. E. PILLSBURY,
For the Plaintiffs in Error.
SAMUEL J. ELDER,
For the Defendant in Error.

[Endorsed:] File No. 18198 Supreme Court U. S. October term, 1902. Term No. 116 Henry Bigelow Williams *et al.*, trustees, P. E. *vs.* Hosea M. Knowlton, attorney general, &c. Stipulation to correct record. Filed Oct. 25, 1902